

1 S.255

2 Introduced by Senators Fox, Ayer, Baruth, Cummings, French, Lyons,

3 McCormack, Pollina, White, and Zuckerman

4 Referred to Committee on

5 Date:

6 Subject: Labor; employment practices; paid absence from work; health care

7 Statement of purpose of bill as introduced: This bill proposes to ensure that all
8 employees shall accrue a minimum number of paid hours annually so they can
9 take paid time from work to take care of their own health and safety needs and
10 those of their families.

11 An act relating to paid absence from work for health care and safety

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. FINDINGS

14 The General Assembly finds:

15 (1) Nearly all employees need to take time off from work because the
16 employee is sick or injured; needs to care for a sick or injured family member;
17 or needs to attend or accompany a family member to scheduled preventive,
18 routine, or therapeutic health care appointments.

19 (2) One-half of all private sector employers do not provide paid time off
20 for absence from work for illness or medical care. An estimated 38 percent of

1 all private sector workers in the State must choose between jeopardizing their
2 health or the health of a family member and forgoing income.

3 (3) Low-income employees are less likely to have paid time off from
4 work to care for their health and therefore are more likely to work when sick or
5 injured to avoid losing income. The majority of low-income workers are
6 clustered in service sector jobs such as food services, retail sales, child care,
7 and health care, which require substantial contact with the public. When these
8 service employees work when sick, they jeopardize not only their own health,
9 but also the health of coworkers and the public, thereby creating health and
10 financial implications that extend well beyond the workplace.

11 (4) Many employees who do have paid time off from work to tend to
12 their own health care issues are not permitted to use that time to care for sick
13 family members.

14 (5) Routine, preventive health care contributes to the prevention of
15 illness or injury, minimizing recovery time, and reducing the need for more
16 costly medical or emergency treatment.

17 (6) When parents care for their sick children, the children tend to
18 recover more quickly and experience improved mental and physical health.
19 Sick children who are sent to school and child care because a parent cannot
20 afford to leave work to care for them infect other children and adults and
21 increase time lost from school or work.

1 (7) For decades the State has developed programs to help older
2 Vermonters and Vermonters with a disability live at home, avoiding some of
3 the financial and social costs of institutional care. It is crucial for the success
4 of these programs that relatives are available to provide care or assist
5 caregivers.

6 (8) When employees have paid time off from work and are able to care
7 for their own health and the health of close family members without sacrificing
8 income, stress and anxiety are greatly reduced. The employer benefits by
9 gaining a more stable, productive, loyal, and satisfied workforce.

10 (9) Employers also receive direct financial benefits from providing
11 employees with paid time off to care for their own health or the health of a
12 close family member. Studies show that “presenteeism,” the circumstance in
13 which an employee goes to work sick, causes far more costly productivity and
14 financial losses than any losses associated with absenteeism.

15 (10) Employers who provide paid time off for health care generally
16 report that their employees do not overuse or abuse the time off. The typical
17 use of paid time off for health care is between three and five days annually,
18 even when the amount of paid time available is greater.

19 (11) Nationally, at least one-quarter of all women report having suffered
20 physical or sexual abuse by an intimate partner. One in seven men report

1 physical abuse by an intimate partner. One in five women and one in 71 men
2 report having been raped during their lifetimes.

3 (12) Victims of domestic violence are forced to be absent from work
4 because of the abuse. The mean number of days lost from work by rape
5 victims is 8.1, for victims of physical assault 7.2, and for stalking 10.1.
6 Without paid time off from work, these victims are in danger of losing their
7 jobs. Victims of domestic violence, who frequently need the economic
8 security to ensure their health and safety, can be particularly devastated by loss
9 of employment.

10 Sec. 2. 21 V.S.A. § 401 is added to read:

11 § 401. DEFINITIONS

12 As used in this title:

13 (1) “Commissioner” means the Commissioner of Labor.

14 (2) “Differential” means compensation paid in addition to the usual
15 compensation to an employee of a health care facility as defined in 18 V.S.A.
16 § 9432(8) who does not work on a regular schedule and who works only when
17 he or she indicates that he or she is available to work and has no obligation to
18 work when he or she does not indicate availability.

19 (3) “Employee” has the same meaning as set forth in section 341 of this
20 title.

1 (4) “Employer” means an individual, organization, or governmental
2 body, partnership, association, corporation, legal representative, trustee,
3 receiver, trustee in bankruptcy, and any common carrier by rail, motor, water,
4 air, or express company doing business in or operating within this State
5 employing one or more individuals.

6 Sec. 3. 21 V.S.A. § 402 is added to read:

7 § 402. PAID HEALTH CARE TIME

8 (a) An employee shall accrue not less than one hour of paid health care
9 time for every 30 hours worked. In the absence of a more generous paid time
10 plan or collective bargaining agreement provision, an employer may:

11 (1) limit the amount of paid health care time accrued to a maximum of
12 56 hours in a 12-month period;

13 (2) limit to 40 hours the number of hours in the workweek for which
14 full-time employees not subject to the overtime provisions of the Federal Fair
15 Labor Standards Act (29 U.S.C. § 213(a)(1)) may accrue paid health care
16 time; or

17 (3) incorporate paid health care time within a complement of paid time
18 for its employees that provides no less than the minimum required by this
19 subsection with regard to the amount of time available and the uses permitted.

20 (b) Paid health care time shall be compensated at the same hourly rate and
21 with the same benefits, including health care benefits, as the employee

1 normally earns for hours worked. Service or tipped employees shall be
2 compensated at an amount that is not less than the minimum wage required for
3 nonservice or nontipped employees pursuant to section 384 of this title.

4 (c) An employee may use paid health care time for any of the following
5 reasons:

6 (1) The employee is ill or injured.

7 (2) The employee obtains professional diagnostic, preventive, routine, or
8 therapeutic health care.

9 (3) The employee cares for a sick or injured child, parent, parent-in-law,
10 grandparent, spouse, domestic partner, stepchild, foster child, or ward of the
11 employee who lives with the employee, including helping that individual
12 obtain diagnostic, preventive, routine, or therapeutic health treatment.

13 (4) The employee is arranging for social or legal services or obtaining
14 medical care or counseling for the employee or for the employee's child,
15 parent, parent-in-law, grandparent, spouse, stepchild, foster child, or ward of
16 the employee who is a victim of domestic violence, sexual assault, or stalking
17 or who is relocating as the result of domestic violence, sexual assault, or
18 stalking. As used in this section, "domestic violence," "sexual assault," or
19 "stalking" shall have the same meaning as in 15 V.S.A. § 1151.

20 (d) Unless an employer and its employees agree to paid time provisions
21 more favorable to employees:

1 (1) An employee shall use paid health care time in the smallest time
2 increment that the employer's payroll system uses to account for other
3 absences, when the employee's absence is shorter than a normal workday.

4 (2) Paid health care time that is accrued but unused shall be carried over
5 to the next year, but an employee may use no more than 56 hours of paid
6 health care in any one year, unless the employer provides a more generous
7 allotment.

8 (3) Upon separation from employment, an employee shall not be entitled
9 to payment for unused paid health care time unless agreed upon by the
10 employer.

11 (4) At the employer's discretion, an employee may borrow paid health
12 care time before the time is actually accrued.

13 (5) An employee who is rehired within 12 months after a separation
14 from employment shall retain paid health care time accrued but unused at the
15 time of separation, unless the employee was compensated for the paid health
16 care time at the time of separation from employment.

17 (e) An employer with a paid time policy that is comparable to or more
18 generous than the paid health care time provided under this section is not
19 required to provide additional paid health care time.

1 (f) An employer shall not require an employee to look for or provide a
2 replacement worker for the time during which the employee uses or is
3 expected to use paid health care time.

4 (g) An employer may require an employee planning to take paid health care
5 time to:

6 (1) make reasonable efforts to avoid scheduling routine or preventive
7 health care during regular work hours; or

8 (2) notify the employer as soon as practicable of the intent to take paid
9 health care time and the expected duration of the employee's absence.

10 (h) An employer shall post notice of the provisions of this section in a form
11 provided by the Commissioner in a place conspicuous to employees at the
12 employer's place of business. An employer shall also notify an employee of
13 the provisions of this section at the time of the employee's hiring.

14 (i) This section shall not apply to an employee of a health care facility as
15 defined in 18 V.S.A. § 9432(8) if the employee:

16 (1) is under no obligation to work a regular schedule;

17 (2) works only when he or she indicates that he or she is available to
18 work and has no obligation to work when he or she does not indicate
19 availability; and

20 (3) receives higher pay in the form of a differential as defined in section
21 401 of this title, or some other increased compensation than that paid to an

1 employee of a health care facility performing the same job on a regular
2 schedule. An employer may agree to provide paid health care time to an
3 employee covered by this subsection.

4 (j) This section shall not apply to an employee of a school district,
5 supervisory district, or supervisory union as defined in 16 V.S.A. § 11 that:

6 (1) is employed pursuant to a school district or supervisory union policy
7 on substitute educators as required by the State Board of Education Rule
8 5381; and

9 (2) is under no obligation to work a regular schedule; and

10 (3) is not under contract or written agreement to provide at least one
11 period of long-term substitute coverage which is defined as 30 or more
12 consecutive calendar days in the same assignment.

13 (k) An employee who uses paid sick leave shall not forfeit his or her rights
14 to leave under sections 472 and 472a of this title.

15 (l) An employee who violates this section may be denied payment for the
16 amount of time misused.

17 (m) An employer who violates this section shall be subject to the penalty
18 provisions of section 345 of this title.

19 (n) Nothing in this section shall be construed to interfere with the
20 enforcement of or require a change in a collective bargaining agreement that is
21 comparable or more generous than the paid time provided under this section.

1 (o) The Commissioner shall enforce this section in accordance with the
2 procedures established in section 342a of this title.

3 Sec. 4. 21 V.S.A. § 345 is amended to read:

4 § 345. NONPAYMENT OF WAGES AND BENEFITS

5 (a) Each employer who violates sections ~~342 and 343~~ 342, 343, and 402 of
6 this title shall be fined not more than \$5,000.00. Where the employer is a
7 corporation, the president or other officers who have control of the payment
8 operations of the corporation shall be considered employers and liable to the
9 employee for actual wages due when the officer has willfully and without good
10 cause participated in knowing violations of this chapter.

11 * * *

12 Sec. 5. EFFECTIVE DATE

13 This act shall take effect on July 1, 2014.